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November 9, 1983

Mr. David T. Rines  
Executive Assistant  
Office of the Governor  
State House  
Concord, New Hampshire 03301

Dear Mr. Rines:

This letter is in response to your inquiry by memorandum dated October 5, 1983 regarding terms of appointment to certain boards and commissions. Your specific question was whether new appointments to boards provided for during the 1981 session should be from the date of the expired term or from the date of appointment.

We have construed your request to refer both to additional positions created in the 1981 session and to existing positions designated by the legislature to be held by a public member. The general rule is that terms of appointment are considered to be terms of position, not terms of the appointee. When a new position is created, the first term of that position commences on the date of appointment, confirmation or approval by the governor and council. For the agencies which are the subject of your inquiry, the term of the position expires three years or five years from the date of the first appointment. All successive appointments to a position are made from the date of the expired term or for the unexpired term. If an existing position is designated to be held by a public member, the appointment of the public member is made upon the first vacancy, is considered to fill an existing position, and is made from the date of the expired term or for the unexpired term.



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The terms of appointment for positions of stated and limited duration on state boards are governed by RSA 21:33-a. Unless a specific statute provides otherwise, terms of appointment are to be construed as follows:

"I. That the language in such statute creating a term of stated and limited duration shall create a term of the position, not of the appointee thereto, with the first such term, to a position to which no appointment has previously been made, to commence on the date of such appointment confirmation or approval by the governor and council.

II. That a vacancy in such position shall be filled for the unexpired term, and

III. That an appointee to such position shall serve for the appropriate term or unexpired portion thereof and until his successor is appointed and qualified."  
RSA 21:33-a.

None of the boards listed in your memorandum provides a different rule for terms of appointment. Thus, for each of those boards, the first term for a position commences on the date of appointment. The term expires three years or five years from the date of appointment. All subsequent appointees serve from the date that the previous term expired or fill the unexpired term.

Some confusion may have arisen because the legislature, in its 1981 session, created "public members" for many of the boards. By these provisions, the legislature required one of the positions on a board to be held by a public member. In each instance when a board retained the same number of positions, and designated one of those positions to be held by a public member, the legislature also provided that the appointment of the public member was to be made upon the first vacancy occurring after the statute came into effect. See, e.g., 1981 N.H. Laws 480:11. Thus, the public member was to assume one of the existing positions on a board when the term of that position expired or when a vacancy occurred. The

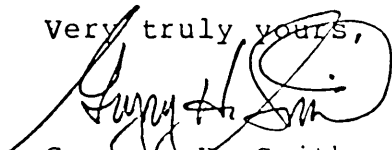
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public member would serve from the date of the expired term or fill out an unexpired term.

In one case, the Barbering and Cosmetology Board, RSA 313-A, the board was increased in size and one of the new positions was designated to be held by a public member. In this instance, since the public member is filling a newly-created position, the public member serves a full term which commences on the date of appointment.

I trust that this has answered your question. If you have further questions, please feel free to contact me.

Very truly yours,



Gregory H. Smith  
Attorney General

JAS/smg  
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